

**RECOMMENDATION OF THE HEARING EXAMINER
TO THE CITY COUNCIL
CITY OF BAINBRIDGE ISLAND**

In the Matter of the Application of

John and Alice Tawresey

SUB15353

For a Preliminary Subdivision Approval

Introduction

John and Alice Tawresey seek preliminary subdivision approval for a multifamily subdivision of four parcels totaling 2.39 acres located between Cave Avenue North and Highway 305 into five multifamily lots.

Hearing: An open record public hearing was held on October 1, 2010. After the close of the hearing, additional public comment was accepted until 4 p.m. and additional City response until October 4, 2010, 4p.m. At the request of the applicant, time for Applicants' response was extended until October 15th. On October 25, 2011, an order remanding the application for additional analysis was entered. The Department of Planning and Community Development filed its response to the order on December 8th and other parties filed comments on that response. Applicants filed an alternative plan revising the proposed plat on March 9, 2011, and the application was then remanded for review of the revised plat. The public hearing on the revised plat was held May 27, 2011, at the end of which the record was closed. Heather Beckmann, Associate Planner, and Chris Wierzbicki, PE, Deputy Director, represented the Director, Department of Community Development. Applicants appeared for themselves.

Code References: All references to sections in this decision are to the Bainbridge Island Municipal Code, unless otherwise indicated.

After due consideration of all the evidence in the record, testimony and written submittals, the following shall constitute the findings, conclusions, and recommendation of the Hearing Examiner to the City Council on the revised application.

Findings

1. John and Alice Tawresey, hereafter “Applicants”, applied on December 23, 2009, for approval of the preliminary subdivision (Cave Landing) of four parcels totaling 2.39 acres into eight multifamily lots. After the remand of the matter to City departments for additional analysis and information and the City’s response to the remand, Applicants revised the application to propose division into five multifamily lots to accommodate up to 22 residential units, a smaller buffer reduction, and a sidewalk on Cave Avenue.
2. The subject site is located largely to the west of the lots at 263-487 Cave Avenue NE, a dead end street, and east of State Route 305, but also includes a lot with street frontage at 439 Cave Avenue NE. The proposal includes a geologic hazard buffer reduction and minimum lot area reduction, along with a density bonus based on open space.
3. The subject site is currently undeveloped except for a single-family house on the lot at 439 Cave Avenue, and a pedestrian trail. The site has a moderate coverage of coniferous and deciduous trees with some understory.
4. The Comprehensive Plan and zoning designations for the site are Urban Residential District (UR, R-4.3) and zoning of R-4.3, 4.3 units per acre for the single lot fronting on Cave Avenue, and Urban Multifamily District (UMF, R-8) and zoning of R-8, eight units per acre, for the remainder. The site is within the Winslow Master Plan Study Area.
5. The site adjoins the Winslow Ravine to the north of the property and the land on the subject site slopes about 6 percent down toward the west and south from an elevation of approximately 150 feet in the northeast corner to approximately 115 at the southern tip.
6. State Route 305 separates the site from development and uses to the west. Development of the surrounding properties to the south, east, and north across the ravine is single family and multi-family residential plus a preschool and daycare center.

THE PROPOSAL

7. Applicants propose that each of the five lots to be created would be developed with at least two dwelling units for a maximum of 22 dwelling units. The allowed density based on the zoning of the site is 17 dwelling units, including the unit for the R- 4.3 lot, however Applicants propose to utilize the density bonus in Section 18.15.080 by providing 23,253 square feet of the proposed open space, or 27 percent of lot area zoned R-8, i.e., proposed Lots A, B and E, to be permanent public open space which would allow a 50 percent bonus or eight units for a total of 24 plus one unit for the lot in the R-4.3 zone. Exhibit 133; Testimony of Beckman. The Applicants chose to propose the lower number of units to be sensitive to neighborhood character. Testimony of J. Tawresey. The density bonus proposal is not part of the preliminary subdivision approval but would be considered at the time that applications for building permits exceed 17 units.
8. In addition to the residential lots, the subdivision would provide a combination of public and private open space areas totaling 43,914 square feet or about 44 percent of the total area. Exhibit 135. The triangular parcel at the south end of the site would be retained as open space, along with additional open space to the north of the entrance roadway, along the east perimeter north of the access roadway to the slope buffer, the northern geologically hazardous area buffer, and the 25 ft. wide vegetative buffer next to SR 305.

9. Lot sizes in the plat would vary from 7,006 to 28,548 square feet. The minimum lot size in the R-8 zone is 5,400 square feet per unit (10,800 for two units) or 5,000 square feet for single family, but an open space option is available to allow smaller lots if an additional 15 percent of permanently protected open space above that otherwise required is provided, which Applicants propose. Sections 17.04.082D.3 and 17.04.085D. A multifamily subdivision is not required to provide open space beyond that required by the Critical Areas Ordinance and Shoreline Master Plan, when applicable. The proposal meets the requirements of those code provisions.

10. Section 18.15.050 limits lot coverage to 40 percent when the bonus density provisions are utilized. The proposed plat shows 40 percent but compliance with the lot coverage limitation would be reviewed during the required site plan review and during building permit review. Testimony of Beckman.

CRITICAL AREAS BUFFER

11. The south slope of the ravine, adjacent to proposed lots A and B, is designated as a geologically hazardous area. The minimum no-disturbance buffer required from the edge of the geologically hazardous area is 80 feet, based on the height of the slope, Section 16.20.150E(2)(a), "except where no other reasonable alternative exists." Applicants initially proposed a reduction of the required buffer to 25 ft. plus the required 15 ft. building setback but amended their proposal to provide 60 feet of buffer plus the 15 ft. building setback.

12. A critical area report (Exhibit 4) was submitted as required by Section 16.20.150. The engineering geologist analyzed the slope's stability and concluded that it appears to be stable now and historically but that making cuts or fills or increasing moisture through the addition of drain fields or stormwater ponds and runoff from impervious surfaces may increase the potential for slope instability. The City's technical review committee reviewed and commented on the report and received comments from its third party geotechnical review consultant. The comments were forwarded to Applicants' geotechnical engineer for response. Exhibit 52. The technical review committee observed that the proposal provides the required stream buffers and that the development would have little impact on stream or wildlife habitat because the property is not part of a wildlife corridor and because of the narrowness of the strip of forest between SR 305 and existing residential development. Applicants' consulting engineering geologist prepared an addendum to the critical area report with information from additional subsurface exploration and laboratory analyses and using a different computer program for stability analysis. Exhibit 56. The additional work confirmed the initial value of 1.5 factor of safety for static conditions and 1.2 for dynamic conditions. Though all the samples were moist, no groundwater was encountered and the nature of the soils suggested low permeability. It found the site isolated from the surrounding shallow groundwater regime because of the ravine to the north and west. The addendum again found a 25 ft. buffer with 15 ft. building setback to be adequate to protect the proposed development and the critical area and would not decrease the factor of safety for slope failure.

13. For approval of a reduced buffer, the critical area report must demonstrate to the Director that the reduction will not reduce the level of protection, described in Section 16.20.150E(1), to the proposed development, adjacent properties and associated critical areas. Section 16.20.150E(2)(a)(i)(A). The report satisfied this requirement.

14. The Director recommended approval of the initial proposal for the a 25 ft. buffer reasoning that without the buffer reduction the number of dwelling units would have to be reduced

by approximately eight, to only 68 percent of the site's development potential. It was explained that the Director looks at the location of proposed structures, the proposed number of lots, and whether there is a reasonable alternative that would allow that number without reducing the buffer. Testimony of Wierzbicki. Because the Winslow Master Plan, a sub-element of the Comprehensive Plan, contemplates denser residential development, the lesser density that could be accomplished without the buffer reduction would not support the intent of that plan so the Director found that the buffer reduction is a reasonable alternative. Exhibit 82. Staff also found that the geotechnical report and addendum satisfied the Code's safety requirements showing that the buffer can be reduced without reducing the stability of the slope for the existing or proposed development.

15. The application was remanded in part because, while the Director determined that the buffer reduction was a reasonable alternative, the record did not indicate that the Director determined that there was no other reasonable alternative, as required by the Code.

16. In response to the requirement for further analysis as to reasonable alternatives, staff looked for any alternative that would better serve the safety purposes of the regulations. Exhibit 104. Support was found by the Director for this interpretation in the classification as geologically hazardous areas which provides, in part:

Areas in this category are a potential risk to public health, safety, and welfare when construction is allowed. While some potential risk due to construction can be reduced through structural engineering design, construction in these [geologically hazardous] areas should be avoided when the potential risk cannot be reduced to a level comparable to the risk if the site were initially stable prior to construction....

Section 16.20.150C. The classifications are to be based on the risk to the environment, as well as to the development, according to the section.

17. The Director pointed out the purpose of the geologically hazardous regulations to: "prevent the potential for personal injury or loss of life or property due to flooding, erosion, landslides, seismic events, or soil subsidence." Section 16.20.150B. In light of that statement, the Director found that the intention is to regulate geologically hazardous areas to avoid impacts on development *from* the critical area, unlike providing protection *for* the critical area such as with other critical areas such as wetlands or fish and wildlife habitat areas. The Director interprets the buffer requirement as a "surrogate" for safety, intended to prevent encroachment where there is no reason to encroach but not where encroachment is needed to achieve a proposal's objectives if there is assurance that safety will not be compromised, i.e., the criteria allow division or development within the buffer if the proposed development can be built safely. Exhibits 104 and 133; Testimony of Wierzbicki.

18. Section 16.20.150E(2)(b), addressing development design and location, does require that development proposals be designed to avoid impacts *to* the geologically hazardous area, and that Section 16.20.150E(1)(f) prohibits further degradation of the values and functions of the associated critical areas.

19. The definition of "reasonable alternative" in the Critical Areas chapter is "...an activity that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation." Section 16.20.030(41).

20. The Director viewed the proposal's initial objective to be the creation of eight multi-family lots, which staff concluded could not be done without buffer reduction, and now division into five lots.

21. Applicants' stated objective is:

...to divide the land into lots and provide a multifamily density equal to or approximating the density allowed in the zoning code, conform to the goals of the Comprehensive Plan and be of sufficient density to economically justify development.

Exhibit 124. While they would have preferred the first proposal, both proposals meet their objectives. Testimony of J. Tawresey. Mr. Tawresey also testified that if the buffer were increased beyond the 60 feet proposed, the subdivision would have fewer lots with more units on each.

22. The intention of the buffer exception language, according to the Director, is:

...to avoid encroachment of development in geo-hazard buffers where there is no reason to do so, but not to prevent a proposal where its objectives can be accommodated by technical assurance that safety will not be compromised. If the safety requirements of the geo-hazard regulations could be better met by an alternative approach to the proposal, it could be reasonable to require a change in the proposal.

Exhibit 133.

23. In determining the extent of the permissible reduction, the Director compares alternatives that balance the stability against the measures required to make the structures stable and if one highly engineered system could be stable close to the slope and one could be built farther away from the slope with a conventional system, the closer alternative would be unreasonable. Here, the 25 ft. buffer with 15 ft. setback would allow conventional foundation design so would have been reasonable, according to the analysis.

24. A buffer reduction to 25 feet was approved for both the Vineyard Lane development and the Gateway project on the opposite side of the ravine from the subject site. Testimony of J. Tawresey.

25. Section 16.20.150 E.2 (a)(iii) requires that all buildings and structures be set back a minimum of 15 feet from the outer edge of the buffer. This is depicted on the site plans. Section 16.20.150E.2(b-h) establishes standards regarding development design and location that apply at the time of development proposals.

26. The proposal provides the required stream buffers. Exhibit 52.

VEHICULAR AND PEDESTRIAN ACCESS

27. Cave Avenue is classified as a residential-urban street with a standard 40 ft. wide right-of-way except for some portions where the full width has not been dedicated, with a paved roadway on average 19 ft. wide narrowing to just over 18 ft. at one point. Exhibit 45. The street dead ends at the north and terminates at its intersection with Winslow Way, where it is controlled

by a stop sign. The intersection is 160 ft. east of the intersection of SR 305 and Winslow Way. A marked crosswalk across Winslow Way on the east side of the intersection serves pedestrians.

28. The southern portion of Cave Avenue serves an office building and commercial parking lot and provides access for a residential condominium/retail development on Winslow Way, among other uses. The more northern portion serves about 20 single-family residences, a residential condominium, a day care facility and a nursery school facility. Sidewalks extend some 300 feet northerly from Winslow Way but the remainder of Cave Avenue does not have sidewalks and because conditions such as brush and a steep slope lining the street, pedestrians must walk in the street for most of the distance. Exhibit 45.

29. According to residents of the neighborhood, the posted speed limit on the street is 15 miles per hour, contrary to the statement Exhibit 104. It is often exceeded. Exhibit 45.

30. A pedestrian trail runs through the SR 305 right-of-way next to the northern portions of the subject site and then through the southern open space designated for Lot E. Applicants conveyed an easement for the path in that portion of the site to the City. To connect with Cave Avenue, the easement continues across a lot owned by Applicants to the south of the site. Testimony of J. Tawresey.

31. There are four streetlights on the west side of Cave Avenue, but they are reported to be far enough apart that much of the street is unlit. Exhibit 45. The pedestrian trail is not lighted. Though described by some residents as unusable in rainy periods due to mud, the surface is crushed rock and was not muddy after two days of rain. Exhibit 101.

32. Vehicular access to the new lots would be via a new roadway through a 40 ft. wide public right-of-way from Cave Avenue NE across the lot with frontage on Cave Avenue (existing Lot 10) and ending in a cul-de-sac. A sidewalk is to be installed on both sides of the new street and around the cul-de-sac. All five lots would have at least 25 feet of frontage on the new right of way. A 5 ft. wide pedestrian easement, with 2.5 feet on each of Lots B and C, would extend from the cul-de-sac to the existing pedestrian trail.

33. Section 17.04.080C requires that the existing roadway character be maintained where practical and that roads and access be consistent with the City's Design and Construction Standards and Specifications. The Public Works Department found that the proposed public right of way, access easement and roadway widths are not greater than the minimum requirements. The City Engineer has recommended conditions of approval regarding street standards, the sidewalk, etc.

34. Applicants' consultant provided a memorandum identifying estimated trip generation and potential impacts of the proposed development as initially proposed. Exhibit 16. The consultant estimated that the development would generate a total of 9 new trips during the PM peak hour and 107 in the average weekday. With a 25 percent reduction for location within the core area of Bainbridge Island, those numbers would be 7 trips during the PM peak hour and 80 for the average weekday.

35. Residents describe delays at the intersection, especially during ferry commuter times, due to backup from the congested intersection of Winslow Way and SR 305. E.g., Exhibit 83. Residents pointed out that the addition of 20 dwelling units would double the residential use of the street; that the evaluation of impacts did not and should have considered the two children's

facilities' traffic, and the impact on safety of pedestrians, both existing and future, on a street without sidewalks. The Bainbridge Cooperative Nursery School serves 40 families in two sessions, and estimates that 15-20 cars are using Cave Avenue at 9:00 AM, 11:15 a.m., 12:30 p.m. and 3:00 p.m. The Bainbridge Island Child Care Center with 34 students and seven staff reports that the students arrive between 7 and 9 a.m. with half of the students leaving at 1:00 p.m. and half between 3 and 6:30 p.m. Staff members arrive at 6:30 a.m. and leave at 6:30 p.m. Exhibit 46. Many residents walk to the ferry, to the bus, their children walk to the school bus stop on Winslow Way (Exhibit 29), residents walk to the town center, etc. Those using the pedestrian trail are forced to walk in the street as the trail joins the street before the sidewalk begins. In addition to the residents on Cave Avenue, some residents of Vineyard Lane also use the trail. The 46-unit Housing Resources Board's "Ferncliff Project," on which construction is to begin in 2011, is to be connected by trail to the north end of Cave Avenue as well. Exhibits 83, 89.

36. Section 15.32.030A provides that a concurrency test is to be conducted for applications for preliminary plats, site plans and design review, and "any other land use plan or permit the granting of which would increase the demand for transportation facilities by 50 or more trips per day." Certain development permits are exempt from the concurrency requirement including applications vested prior to the requirement and "any development permit for development that generates less than 50 trips per day, except as provided for in subsection A of this section." Section 15.32.030B.

37. The concurrency test is passed if the capacity of the transportation facilities affected by the proposed development is equal to or greater than the capacity required to maintain the level of service (LOS) standard with the addition of the trips generated by the proposed development. Section 15.32.040B.

38. Members of the Cave Avenue neighborhood contended that the City may not informally exempt a project that does not qualify for exemption under these provisions. A memorandum from the city engineer in response to the contention (Exhibit 99B) provided an expanded discussion on the issuance of a certificate of transportation concurrency explaining that in accordance with Section 15.32.040B it reviewed the Applicants' initial traffic study, the Island Wide Transportation Study (2004), and the traffic analysis for the Ferry Gateway Environmental Impact Study (EIS). The 2004 study identified Cave Avenue as a residential street within the urban zone of the City with a standard level of service (LOS) C. LOS C is defined as a stable operating condition with average traffic delays at intersections, with a volume to capacity ratio of 0.7-0.8, and an unsignalized delay per vehicle at intersections of between 15 and 25 seconds. The 2007 study for the EIS indicated that the intersection was maintaining a LOS C during the PM peak hour. Department of Public Works determined that the proposed development would meet the concurrency test in that: 1) little or no traffic-generating development has occurred in the vicinity or on Cave Avenue since time of the 2007 study; 2) the addition of one vehicle every seven minutes on average due to the proposal would not likely cause the wait times to exceed 25 seconds per vehicle and noted that signage was added earlier this year indicating that vehicles are not permitted to block north-bound turning movements; and 3) it is unlikely that the capacity of the intersection would be further degraded because land along Cave Avenue will be almost fully developed with the proposed development. The hearing examiner, understanding the evidence that a complete transportation analysis had not been performed showed a failure to do the required concurrency, remanded the application for that purpose, among others. In response, Planning and Community Development Department again explained that the concurrency test was performed

but, because the information was several years old, the city engineer asked Applicants to provide updated information. Exhibit 104.

39. Applicants' consultants, RTC Transportation Consulting, arranged for an updated traffic count at the Cave Avenue-Winslow Way intersection. Data was collected between 4:15 and 6:30 PM. The peak hour for the intersection was observed to be 5:15 to 6:15 p.m. with a total of 544 trips during that hour. Ten percent of those trips utilized Cave Avenue. The Highway Capacity Manual 2000 methodology was used to calculate the LOS with and without the proposed development. The report of the analysis, Exhibit 123, states that the model used accounts for the effect of traffic backed up beyond Cave Avenue from Winslow Way's intersection with SR 305, pedestrian traffic, etc. The current intersection operation is at LOS B with 12.9 seconds of delay. Using the volume of trips estimated by the ITE to be generated by 25 units, instead of the maximum of 22 proposed, and with reductions for the core area, there would be nine PM peak hour trips generated by the project. The LOS would remain B after the proposed development, with 13.0 seconds of delay. The intersection meets the City's LOS standard and the concurrency requirements.

40. Community members testified that this traffic analysis is flawed for failing to take into account the heavy traffic associated with the preschool not at the PM peak hour and the potential build-out of the area, given there is around seven acres still vacant on Cave Avenue. Testimony of Johannsen. The methodology, however, properly utilized the peak hours for residential uses, either AM or PM. Testimony of Wierzbicki. The peak hours for the preschool and daycare would be around the morning arrivals from 7-9 a.m. and the afternoon arrivals and departures spread from 12:30-6:30 p.m. Because the greatest number of trips generated by the new residential development would be during p.m. commute hour that does not coincide with the preschool and day care peak hours, the methodology used should show the greatest impact on the operation of the intersection. Forecasting the effect of traffic generated by total build-out of the area is not a requirement for reviewing the effect of a specific project on the existing system. Testimony of Wierzbicki

41. The pedestrian and bicycle circulation and access to and within a subdivision are to be consistent with the non-motorized transportation plan, Ordinance 2002-09. Staff found that plan did not recommend any improvements for the area. However, after doing further analysis after the remand, the Department determined that the approximately 50 percent increase in the amount of vehicular traffic on the more southerly part of the street would impact pedestrian traffic from the existing residences that use Cave Avenue so that improvements to pedestrian safety must be provided. Exhibit 104. As the subject site does not have Cave Avenue frontage beyond the one lot, the improvements need to extend beyond that frontage. Given the lack of right-of-way, uncentered right-of-way, private structures adjacent to the paved street, etc., the city engineer decided to require a five foot wide sidewalk on the west side of Cave Avenue north from the existing sidewalk to the trail head and a three foot wide gravel shoulder where right-of-way is available on the east side of Cave Avenue north from the "Maes" property for some separation from vehicles in the travel lane. Exhibit 104.

42. Applicants responded with a proposal to provide a sidewalk from the entrance road of the new subdivision extending south on Cave Avenue to meet the existing sidewalk on the west side of Cave Avenue south of Gilmore Way. Though Applicants communicated with the owners of

vacant property on the east side regarding an easement or dedication so that the sidewalk could be extended the entire way on one side, they were unable to obtain agreement. So, the sidewalk may start on the east side with a signed, mid-block pedestrian crossing to connect to the west side. The Director proposes a condition to assure this improvement.

43. To comply with American Disabilities Act regulations for accessible routes, sidewalks must provide the minimum clear width of 36 inches. Exhibits 126 and 127. Any obstructions such as utility poles or fire hydrants in the width to be improved with a sidewalk would have to be moved.

UTILITIES AND PUBLIC SERVICES

44. Natural drainage of the site is to the west and south toward SR 305 and runoff now flows over the highway cut slope to a rock drain along the east edge of the highway. Storm drainage from new impervious surfaces is proposed to be directed to the SR 305 drainage system. The initial proposal had road surfaces first drain into rain gardens located in the cul-de-sac, south of the access roadway, and in a portion of one of the lots. In response to community concerns about mosquito breeding and safety of children, those rain gardens have been removed from the proposal. Runoff from roofs and other impervious surfaces would also be conveyed to the highway system. Exhibit 62. Concern was expressed about affect on the aquifer, however the city engineer has reviewed and approved the preliminary drainage plans that ensure the subdivision will not cause an undue burden on the drainage basin or water quality as meeting the standards of Chapter 15.20. Exhibit 82. The City Engineer has approved preliminary drainage plans. Exhibit 133.

45. The City issued a Non-binding Commitment for Water and Sewer System Capacity, Exhibit 9, determining that the property is within the City's service areas, that water and sewer mains are adjacent to the property, and that the mains are in service. The Commitment letter shows that the City currently has sufficient water and sewer capacity for the proposed development.

46. Residents of the Cave Avenue neighborhood complained of low water pressure at the upper end of Cave and expressed concern about the effect of additional users. Ex. 47 and others. The Public Works Department is evaluating the potential impact on water pressure and will identify methods by which any losses in pressure can be mitigated. Exhibit 82. Proposed Condition No. 28 is intended to address this issue.

47. The sanitary sewer line, as proposed initially, would run along the eastern side of the southerly triangular open space parcel. The owners of two lots adjacent to the open space parcel, 317 and 327 Cave Avenue, on its east side, hold an easement, Greenbelt Easement (Exhibit 36), that preserves the existing condition of the area and limits the use. It allowed the pedestrian path that is now through the area and installation of utilities under that path. The initially proposed location of utilities may be contrary to the terms of that easement. Applicants had identified several alternatives for locating the new sewer line such as accessing the public line on Cave Avenue via the proposed new right-of-way, or over an existing sewer easement on Lot 8 where there is an existing sewer line, and now propose a direct connection to the public line on Cave Avenue. Testimony of A. Tawresey. Staff has proposed a condition requiring showing the location on the final plat drawings.

48. The Bainbridge Island Fire Department requires locating the proposed fire hydrant at the entrance of the project on Cave Avenue. It found that the access to the subdivision is acceptable and will be required to meet all City standards. Exhibit 17.
49. The Department of Public Works and the city engineer have reviewed the proposal for consistency with the City's Design and Construction Standards and Specifications and state and federal regulations and have determined that the proposal is in conformance with those that are applicable at this stage and recommended conditions to assure that the subdivision will conform to all applicable standards and regulations.
50. The subject site is not in an aquifer recharge area or a fish and wildlife conservation area. Exhibit 101.
51. The payment of school impact fees pursuant to Chapter 15.28 has been waived for all new development per Resolution 2011-05. A condition is proposed to require fees if they have been reinstituted.
52. Section 18.85.060 requires that that all trees in the perimeter landscape areas be retained and that either 15 percent of the total number of significant trees on the entire site or 30 percent of the significant tree canopy be retained. A tree retention plan was submitted. Exhibit 7. It shows a total of 116 significant trees and that approximately 49 percent of those trees would be retained. A schematic landscape plan, Exhibit 66, shows the retention of significant trees in perimeter areas, plus other native trees and understory. A condition is required to assure those standards will be met.
53. An open space management plan has been proposed showing proposed ownership of the various open spaces and approved uses, Exhibit 67, but with the revised plans, staff recommends a condition requiring a final open space management plan.
54. Comprehensive Plan policy for Winslow Residential Districts, W7.3, is to "Provide landscape buffers between any multi-family and existing single family." Section 18.85.070 establishes a maximum perimeter width of 20 ft. and a minimum of 15 ft. with a partial screen buffer for urban multifamily districts abutting single-family zoning or use. The Director found that the proposed twenty feet along the east perimeter north of the access roadway, fifteen feet adjacent to proposed Lot E and 25 feet along the east perimeter of the bonus open space associated with Lot E is an appropriate amount of screening between the multifamily and single family districts.
55. SR 305 is defined in the comprehensive plan as a scenic road and by statute is designated a scenic highway. RCW 47.39.020. For a multifamily subdivision, Section 17.04.085B establishes the requirement for a minimum 25 ft. vegetative buffer adjacent to scenic roads. The proposal includes a 25 ft. full screen buffer meeting the minimum requirement. Neighborhood residents urge that a 25 ft. buffer in this location would be anomalous as wider buffers, 50 feet with a 35 ft. minimum, are required in the abutting districts to the north and south and urge that a deeper buffer be required to maintain the rural character of the highway and avoid aesthetic impact along SR 305 and to avoid increased highway noise and pollution from vehicles in their neighborhood. Exhibit 49; Testimony of Johansen, Schmid, and others. Staff pointed out that if the site were developed with a multifamily structure, which would not require further subdivision, only a 15-20 ft. partial screen buffer would be required under the landscape standards of Section 18.85.070 that do not

establish any perimeter landscape requirement specific to scenic highways in urban multifamily districts, so the 20 ft. partial screen requirement would presumably apply. Testimony of Beckman. Staff proposed conditions for the recording of open space easements or covenants, recording of a management plan, and signage along its border.

COMPREHENSIVE PLAN POLICIES

56. The Winslow Master Plan targets the Winslow Master Plan Study Area to accommodate fifty percent of the future population growth for the island through denser single-family and multifamily development.

57. The proposed density amounts to approximately nine units per acre. The density of the Cave Avenue single-family subdivision is approximately three units per acre. The density of the development to the north, the Vineyard Lane condominium development, is approximately 14 units per acre; of the Cave Avenue condominiums to the south is approximately twelve units per acre; and of the Harbor Square mixed-use development is approximately 43 units per acre. Community members urge that the appropriate comparison is the more immediate single-family subdivision and that the density proposed is incompatible with that.

58. The proposed preliminary subdivision is consistent with the designation in the Comprehensive Plan's land use map for Urban Multifamily District.

59. The Comprehensive Plan policy TR 1.5, SR 305 scenic character, is to "(r)etain the scenic character of SR 305 by minimizing the placement of signs, discouraging new access points, and maintaining vegetative buffers." There are no signs or new access points proposed and a buffer would be maintained, consistent with this policy.

60. Comprehensive Plan Policy W 7.4 is to have regulations addressing the compatibility of multi-family developments with adjacent uses and to retain the scale of development in Winslow. During site plan and design review, required by Section 18.105.020, the design standards addressing compatibility and scale would be applied to the proposal to assure compliance with the policy. The Director recommends a condition addressing the requirements for site plan review.

PROCEDURAL COMPLIANCE

61. The City's responsible official issued a Mitigated Determination of Nonsignificance (MDNS) August 20, 2010. Exhibit 59. Though the hearing record contains comments critical of the MDNS, Exhibit 97, the MDNS was not appealed. Conditions of the MDNS are proposed to be listed as conditions of subdivision approval.

62. Notice of the public hearing was posted in the official posting places on September 8, 2010, and on the property September 14, 2010, published in the official newspaper September 14, 2010, and mailed to the applicant and to the addresses within 300 ft. of the subject property on September 8, 2010. Exhibits 76 and 79. Numerous requests were made for a change of date and after correspondence from interested persons and a conference call, the October 1st hearing date was set and new notice given.

63. An objection was lodged that the community association's attorney provided unsworn testimony at the initial hearing. An examination showed that the record did not support the objection in that the attorney provided argument based on facts in the record.

64. The requirements that must be met for preliminary subdivision approval are set out in Section 17.04.094 and RCW 58.17.110.

65. The Hearing Examiner is authorized by Section 2.16.110C to hold a public hearing and make a recommendation to the City Council on a preliminary subdivision.

Conclusions

1. The Hearing Examiner has jurisdiction to hear and make a recommendation on this application.

2. Notice was given as required by Section 2.16.085D.

3. The findings show that the subdivision standards of Section 17.04.085 are met as required by Section 17.04.094A.1 in that:

A. Through use of the incentive for open space in a multifamily subdivision, the sizes of the proposed lots do comply with Code requirements for the zoning district;

B. The proposed preliminary plat provides for the minimum 25-foot full screen vegetative buffer along SR305, a scenic road. Without a clearer statement of intent or criteria for requiring more than the minimum, and recognizing that the City Council has determined that an even lesser buffer would be allowed in multifamily districts if it were not for the proposal to subdivide the property, the minimum width must be regarded as acceptable.

C. Road, bicycle and pedestrian access performance standards, pursuant to Section 17.04.080.C and with the new sidewalk proposal are satisfied. The proposal maintains existing roadway character and minimizes impervious surfaces as the width of the new roadway and access easements are not greater than the minimum required consistent with the performance standards of the section. The design for roads and access is consistent with City standards. The proposed sidewalk, though not optimum with its mid-block crossing, is an improvement over the current condition and provides for adequate pedestrian safety. Conditions proposed by the city engineer are appropriate and should be imposed.

4. Appropriate provisions have been made for the public health, safety and general welfare and public use and interest including those listed in RCW 58.17.110. The findings show that the preliminary subdivision provides open spaces, for drainage, adequate streets and sidewalks, for sanitary waste, and for schools through the condition requiring payment of impact fees if reinstituted. While there is concern about the density proposed, and the change to the immediate area, the Comprehensive Plan and regulations have determined the density desired for the wider area that this subdivision would help to accomplish, and the density proposed would be less than could be achieved through development without the subdivision.

5. The preliminary subdivision is to conform to critical area requirements. Whether the proposal complies depends upon whether it qualifies for the exception in Section 16.20.150E.

Though both use common words, there appear to be two differing interpretations of the provision regarding absence of any other reasonable alternative and they appear to turn on whether the sentence should be read that alternatives are lacking to the 80-ft. buffer. In one interpretation, the buffer must be observed unless there are no reasonable alternatives to that setback for otherwise providing the necessary level of safety, and the Director has found alternatives that provide that level of safety without requiring the 80 feet, or whether the required absence is of alternatives to the proposed reduction in the buffer, as construed by the neighborhood. The wording of the provision leads to this confusion. The hearing examiner adopts the second construction as it would seem anomalous that the standard would be written to apply only if no other reasonable alternative exists, rather than being prescriptive unless a showing is made that the proposal's objectives cannot be met applying the standard. Further, the language "at a lower environmental cost or decreased level of environmental degradation" in the definition of "reasonable alternative" strongly suggests that the alternatives to be considered are not alternatives to the standard buffer but to a reduced buffer since it seems without question that no reduced buffer bringing development closer to the critical area would have less effect on the environment, or even safety, than the standard. The City Council, however, is the authority on what it intended and may find the former interpretation reflects its intention.

6. The source of the definition of "reasonable alternative" in the Code is the SEPA definition used for determining what alternatives to a proposal that would have a lesser environmental cost must be evaluated in an environmental impact statement. The proposal's objectives in that context are viewed more broadly than the Director has here where the Director is treating the desired number of lots as the objective, though Applicants have offered a broader statement of the proposal's objectives. The neighborhood urges that a reasonable objective must be based on the development potential of the property factoring in the effect of existing environmental and other regulations that limit development, and that a reasonable use exception is the appropriate vehicle for relief from regulations that are overly burdensome given particular facts. The fact that the exception exists within the geographically hazardous area buffer standard section, however, suggests a more expansive view of objectives is appropriate in that something less than no reasonable use is a sufficient showing.

7. Even assuming that the objective simply is to divide the property into five multifamily lots, with or without reliance on a decision reducing the buffer, and utilizing either of the interpretations of the exception applicable where there is no other reasonable alternative, the record is devoid of anything but conclusory statements that the earlier eight multifamily lots cannot be created within the site with the prescriptive buffer. Applicants acknowledge that the division into five lots while providing a larger buffer satisfies the proposal's objectives. The testimony that the alternative of increasing the buffer further would mean that there would be fewer lots with a greater number of units needed to meet the objectives seems to indicate that, while it may be less desirable for other reasons not shown in the record to be more environmentally costly, the objectives can be reached with that alternative as well. Therefore, the hearing examiner must conclude, based on the record and this analysis, that Applicants have not carried their burden of proving that there is no alternative at a lesser environmental cost to reducing the buffer to 60 feet in order to meet their objectives as the testimony suggests that the desired density can be achieved while maintaining the prescriptive buffer.

8. The findings show that the city engineer has determined that preliminary plans demonstrate that the subdivision conforms to regulations concerning drainage, will not cause undue burden on the drainage basin or water quality, the streets and pedestrian ways are properly coordinated with other streets and are adequate to accommodate the anticipated traffic, and the subdivision conforms to subdivision chapter requirements and construction standards and specifications or that with conditions of approval recommended will do so.

9. With the recommended conditions, the preliminary plat will comply with applicable provisions of the Bainbridge Island Municipal Code except for the required geologically hazardous areas buffer, Chapters 58.17 and 36.70A RCW, and other state and federal regulations.

10. The proposed subdivision, with the recommended conditions, will be consistent with the Comprehensive Plan in that it will provide perimeter landscape buffers between single-family residential development and the proposed multifamily development; site plan review will assure compatibility of the development with adjacent uses; the retention of the scenic character of SR 305 will not be affected by signage and a 25 foot wide, vegetative buffer, though not as deep as the community desires, will respect the scenic character of the island; and the additional density is consistent with the target to accommodate 50 percent of future population grown in the Winslow Master Plan Study Area.

11. The findings show that, but for the required critical area buffer, the public use and interest would be served by the platting of the proposed subdivision, with approval subject to the recommended conditions.

Recommendation

The proposed preliminary subdivision should not be approved because it fails to provide the required geologically hazardous area buffer. If the City Council concludes that there are no reasonable alternatives to the buffer reduction, the proposed preliminary subdivision should be approved subject to the conditions recommended by staff as modified herein, and contained in Appendix A.

Entered this 24th day of June 2011.

/s/ Margaret Klockars

Margaret Klockars
City of Bainbridge Island
Hearing Examiner *pro tem*

Concerning Further Review

The City Council will hold a public meeting to consider the application pursuant to Sections 17.04.093, 17.04.094 and 17.04.095 and Chapter 2.16. A decision by the City Council is

final unless, within 21 days after its issuance, a person with standing appeals the decision in accordance with Ch. 36.70C RCW.

APPENDIX A

SEPA Conditions:

1. All graded materials removed from the subdivision shall be hauled to and deposited at City approved locations (Note: local regulations require that a grade/fill permit be obtained for any grading or filling of 50 cubic yards of material or more, and that a SEPA Threshold Determination be issued for any fill over 100 cubic yards).
2. Prior to any construction activities, the applicant shall apply for a Construction Stormwater General Permit through the WA State Department of Ecology. More information about this permit can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/> or by calling Charles Gilman at (360) 407-7451, email chgi461@ecy.wa.gov.
3. Prior to final subdivision application, the Storm Water Pollution Prevention Plan (SWPPP) for the proposed development shall be provided for City review and approval in accordance with BIMC 15.20. The plans must be approved, the improvements constructed (or a construction bond provided if applicable), and an acceptable final inspection obtained. The design submittal shall incorporate all proposed subdivision improvements including complete civil plans, grading and erosion control plans, roadway plan & profile, storm drainage facilities and drainage report, and shall be prepared by a professional engineer currently licensed in the State of Washington. A Construction Stormwater Permit (NPDES) will be required prior to construction plan approval in accordance with BIMC 15.20.030.B (4).
4. To mitigate impacts on air quality during earth moving activities, contractors shall conform to Puget Sound Clean Air Agency Regulations, which ensure that reasonable precautions are taken to avoid dust emissions. (BIMC Section 16.08.040).
5. Prior to any construction activities associated with this project, the applicant shall acquire a Washington State Department of Transportation (WSDOT) storm water discharge permit to be able to discharge storm water to State Route 305 (SR305) right of way.
6. Any non-exempt tree harvesting shall require the appropriate Forest Practices Permit from the Department of Natural Resources.

7. On site mobile fueling from temporary tanks is prohibited unless the applicant provides and is granted approval for a Permit and Best Management Plan that addresses proposed location, duration, containment, training, vandalism and cleanup. (Reference 1. Uniform Fire Code 7904.5.4.2.7 and 2. Department of Ecology, Stormwater Management Manual, August 2001, see Volume IV “Source Control BMPs for Mobile Fueling of Vehicles and Heavy Equipment”.) (Chapter 173-304 WAC)
8. In order to mitigate any noise impacts, all construction activities must comply with BIMC 16.16.025, Limitation of Construction Activities.
9. All lighting within the subdivision shall comply with the City’s Lighting Ordinance, BIMC Chapter 15.34.
10. Contractor is required to stop work and immediately notify the Department of Planning and Community Development and the Washington State Office of Archaeology and Historic Preservation if any historical or archaeological artifacts are uncovered during excavation or construction.

NON SEPA Conditions:

11. Prior to the development of a second unit and/or multifamily unit on each lot, the applicant of said development shall first apply for and receive site plan review approval. The units are subject to the multifamily design guidelines and the BIMC 18.105.080 (9) density bonus design requirement: building design shall incorporate features such as pitched or terraced roof forms, upper level stepbacks, wall recesses and/or other architectural treatment to minimize building bulk and scale as perceived from adjoining streets and neighborhoods.
12. For lots A & B, an Engineering Geologist or Geotechnical Engineer shall be on-site to inspect site conditions as they are exposed during construction to verify conditions and to make appropriate recommendations as the need arises.
13. For lots A & B, a slope management plan is to be submitted prior to any construction activities to address the existing vegetation and the possible need for supplemental vegetation to anchor the upper slope areas.
14. The final plat submittal shall include street names and indicate the location of any traffic regulatory signs and approved mailbox locations from the United States Postal Service.
15. Prior to final subdivision approval, the applicant shall submit to the City for review and approval complete civil plans and drainage report for the proposed development, and for the proposed 4’ wide public sidewalk along Cave Avenue (from the proposed development Cave Avenue frontage lot south to meet existing improvements). The plans shall include all road, sewer, water and stormwater improvements, and any required easements. The plans shall also address surface and stormwater pollution prevention. The plans shall be prepared by a professional engineer licensed in the State

of Washington and shall be in accordance with BIMC 15.20 Surface and Stormwater management and the City's Design and Construction Standards.

16. Open space easements or covenants shall be recorded together with the land division and represented on the final plat.
17. Prior to final plat submittal, the applicant shall install signage designating the open space along the open space boundary. The signs shall be a minimum of 64 square inches and made of metal, hard plastic, or engraved wood. The signs shall be placed at approximate 50-foot intervals along the open space perimeter.
18. Prior to final subdivision submittal, the applicant shall submit a revised Schematic Landscape Plan for 439 Cave Avenue that includes ornamental native trees, native and drought tolerant shrubs and a bench. Prior to the issuance of a building permit for the first unit, the applicant shall install or provide a performance assurance device for said landscaping and improvements as approved in the revised landscape plan.
19. A final Open Space Management Plan shall be submitted with the final plat application.
20. The following shall be submitted with the final plat submittal:
 - a. A plat certificate; and
 - b. Binding water availability and sewer availability letters. The location of the connections shall be indicated on the final plat drawings.
21. School impacts fees may be required. If school impact fees are in effect at the time of submittal for the final plat, the applicant shall pay one half of the school impact fees for 17 of the multifamily units. The remaining half of the fees shall be paid at the time of building permit issuance for the first 17 units (BIMC Chapter 15.28). The school impact fee for any building permit beyond the 17th unit shall be paid by the applicant of said building permit prior to the issuance of the building permit.

If the fees are in effect at the time of building permit submittal rather than subdivision submittal, then each applicant constructing a residence shall pay the full impact fee at the time of building permit issuance for each residence.
22. At the time of Building Permit Application, demonstration of compliance with applicable stormwater management requirements shall be required in accordance with BIMC 15.20.
23. Prior to clearing and grading activities, the applicant shall apply for a Construction Stormwater General Permit through the Washington State Department of Ecology.

24. Prior to final plat submittal, all lot corners shall be staked with three-quarter inch galvanized iron pipe and locator stakes. The right-of-way centerlines shall be monumented, including the center of the cul-se-sac. A survey of the property must be completed and submitted with the final plat application.
25. The entrance road to this plat (on Cave Avenue) shall have curb returns on both with a minimum radius of 30 feet. Both curb returns shall have two wheelchair ramps constructed to WSDOT Standard Plan No. F-40.12-00. The throat of said entrance shall be paved with asphalt and have a painted cross walk. There shall be a stop sign for exiting vehicles.
26. All rights-of-way proposed to be dedicated to the City shall be 40 feet in width as identified on the Standard Drawing No. 7-050 for a Residential Urban Street. Only the required right-of-way width shall be conveyed to the City.
27. A right-of-way (ROW) construction permit will be required prior to any construction activities within the right-of-way. The ROW permit will be subject to separate conditions and bonding requirements.
28. The proposed water main shall meet the requirements of the Washington State Administrative Code 246-290-230 (5) which requires a minimum of 30 psi at the water meter for a single-family residence connecting to the proposed water main.
29. All storm water infrastructure and/or amenities outside existing and/or proposed rights-of-ways shall remain private property and maintained as such.
30. The proposed fire hydrant shall be placed at the intersection of the entrance road and Cave Avenue per the Fire Marshals request. Said fire hydrant shall also have a Storz Adapter on one of the service ports. Also it shall be the responsibility of the applicant to verify the adequacy of the proposed water main to meet fire flow requirements pursuant to the City of Bainbridge Island Municipal Code 13.10.065 and meet the Fire Marshals requirements for this site.
31. In lieu of completion of improvements according to conditions for a final plat approval, the city council may accept an assurance device, other than a bond, in an amount and in a form determined by the city council, which secures and provides for the actual construction and installation of the improvements or the performance of the conditions within one year, or such additional time as the city council determines is appropriate after final plat approval. In addition, the city council shall require an assurance device, including a bond, securing the successful operation of improvements for one year after city's acceptance of the improvements; provided, that the city council may, upon recommendation of the city engineer or the director, extend the term of the assurance device for up to two years for improvements that will not demonstrate compliance with construction or installation requirements within one year.
32. Except for modifications reflecting compliance with these conditions of approval, final plat documents shall substantially conform to the documents submitted with the

subdivision application, with the exception of those revised documents that were submitted on March 9, 2011, and any revisions required per the conditions of preliminary plat approval.

33. The final plat shall contain the following conditions for recording: 1, 2, 4-13, 17, 21-23.